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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 03 2007

EAC 06 001 50522

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks to continue her employment as a postdoctoral associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief asserting that the director's request for additional evidence was not explicit in what was needed and that the final decision does not explain why the evidence submitted is insufficient.

As will be discussed below, not all of counsel's factual assertions are supported by the record and not all of his legal assertions are persuasive. Nevertheless, we are persuaded that the petitioner's record of achievement in her field, as demonstrated through moderate citation and industry interest, is sufficient to warrant a waiver of the alien employment certification.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Counsel initially characterized the petitioner as "exceptional," although he did not discuss the regulatory requirements for that classification pursuant to 8 C.F.R. § 204.5(k)(3)(ii). This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Biochemistry from the University of Montreal. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, cancer research, and that the proposed benefits of her work, improved cancer treatments, would be national in scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner received her Ph.D. from the University of Montreal in 2002. After receiving her degree, with the exception of a four-month period as a professor at the Beijing University of Technology, the petitioner has worked as a postdoctoral associate in the laboratory of [redacted] Cheng at Yale University. Counsel has repeatedly noted the distinguished reputation of Yale University and [redacted], Chief of the Rheumatology Section at the university, asserts that Yale "only takes the best scientists from around the world." We do not question that Yale is a distinguished educational and research institution. That said, the United States is home to several distinguished universities and other distinguished universities exist throughout the world. We are not persuaded that Congress intended the national interest waiver as a blanket waiver for every postdoctoral associate at a distinguished research institution. Nothing in *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 215, suggests that mere association with a distinguished entity or expert is sufficient to warrant a national interest waiver.

The director concluded that the petitioner had authored six published articles and other manuscripts under review. On appeal, counsel asserts that the petitioner has actually published 11 articles and had given an invited talk and other presentations ignored by the director. Counsel's assertions are not supported by the record. Initially, the petitioner submitted four published articles, seven abstracts and an unpublished manuscript. In response to the director's request for additional evidence, the petitioner submitted five additional articles, all of which were published after the

petition was filed,[1] and another unpublished manuscript. The petitioner also submitted evidence that she presented her work after the date of filing.

The petitioner must demonstrate eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). As of that date, the petitioner had authored four published full-length articles and seven abstracts that represent conference presentations. This is the publication record we will consider.

The petitioner also relies on reference letters. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

[redacted] discusses both the petitioner's Ph.D. research at the University of Montreal and her work in his laboratory at Yale. At the University of Montreal, the petitioner studied estrogen response elements, which can mediate against activity of anti-estrogens in human endometrial cells. [redacted] asserts that the petitioner's work "led to rapid progress in understanding the biochemical and molecular basis for certain human diseases such as breast cancer." While the record does not support counsel's assertion that the petitioner has been cited 30 times, the petitioner did submit evidence that her article on anti-estrogens had been cited 20 times, 18 times by independent research laboratories.

[redacted] explains that previous anti-cancer drugs had different targets on tumor cells, leading to severe side effects. The petitioner demonstrated that tylophorine analogs "down regulate the function of NFκB in tumor cell lines" and, thus, are a "unique new type of anti-cancer compound." [redacted] further states that the petitioner's findings also have implications for NFκB related diseases such as

[1] The oldest, published in 2006 in *Molecular Endocrinology,* was published online October 20, 2005, 17 days after the petition was filed.

Arthritis and Lupus. Finally, [redacted] asserts that the petitioner's work "led to the discovery of a whole new class of compounds" to treat liver and pancreatic cancer.

[redacted], a professor at the University of Tennessee and the petitioner's collaborator, asserts that the petitioner's work with NFκB "is currently being taken up by a company for clinical trials in humans, which is a further indication of its importance and promise."

In response to the director's request for additional evidence and on appeal, counsel asserts that a drug "discovered" by the petitioner is "currently in clinical trials." Counsel characterizes the drug as an "anti-cancer compound" and references a letter by [redacted], Director of Computational Chemistry at Achillion Pharmaceuticals. [redacted] acknowledges that the Department of Pharmacology at Yale has "successfully developed many anti-virus and anti-cancer compounds, particularly, [the petitioner] in her lab." [redacted] then states:

> Our company licensed one drug from her lab which now is almost done with clinical trial stage two. We are very thankful to [the petitioner] for her work on this drug which will soon be marketed.

[redacted]s letter is somewhat ambiguous as he later discusses an HIV drug on which the petitioner is not alleged to have worked. Moreover, it is not clear why, if Achillion Pharmaceuticals is pursuing the petitioner's drug, [redacted], Senior Director for Antiviral Drug Discovery at the company, did not mention this fact in his initial letter. Nevertheless, [redacted] letter appears credible and consistent with the initial letter from [redacted].

The record in this matter would be bolstered by patents or patent applications for drugs developed by the petitioner and "licensed" by Achillion Pharmaceuticals. Nevertheless, we cannot ignore that the petitioner is the author of articles and abstracts discussing these drugs. Moreover, the petitioner's citation record is consistent with the claims made in the reference letters.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the biomedical community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.